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June 14, 1996

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Mr. William F. Coton
Acting Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RE: Public Utility Holding Company Act of 1935
Proposed Regulations Implementing Section 34(a)(1)
GC Docket No. 96-101
FCC 96-192

Dear Mr. Coton:

Enclosed for filing with the Federal Communications Commission, please find the comments of Entergy Corporation in connection with the above referenced proposed rulemaking.

Very truly yours,

MWH/gh
enclosure

cc: Lawrence J. Spiwak
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Office of General Counsel
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Mr. William F. Coton
Acting Secretary
Federal Communications Commission
1919 M Street NW.
Washington, D.C. 20554

RE: Public Utility Holding Company Act of 1935
Proposed Regulations Implementing Section 34(a)(1)
GC Docket No. 96-101
FCC 96-192

Dear Mr. Coton:

On behalf of Entergy Corporation ("Entergy"), a registered holding company under the Public Utility Holding Company Act of 1935, as amended (the "Act"), we hereby submit comments in response to the Notice of Proposed Rulemaking (the "NOPR") issued by the Federal Communications Commission (the "Commission") in the above referenced Docket. The proposed rule establishes the procedure and methodology to be used in determining whether an applicant qualifies for status as an Exempt Telecommunications Company ("ETC") pursuant to section 34(a)(1) of the Act.

I. Background

Section 103 of the Telecommunications Act of 1996 (the "Telecommunications

Act”) added a new section 34 to the Act which effectively permits registered holding companies to enter into telecommunications related industries without prior SEC approval by acquiring or maintaining an interest in an ETC. Under section 34(a)(1), an ETC is defined as “any person determined by the Commission to be engaged, directly or indirectly, wherever located, through one or more affiliates (as defined in section 2(a)(11)(B)), and exclusively in the business of providing:

- A. telecommunications services;
- B. information services;
- C. other services or products subject to the jurisdiction of the Federal Communications Commission; or
- D. products or services that are related or incidental to the provision of a product or service described in subparagraph (A), (B) or (C).

Under section 34(a)(1) an applicant that has applied in good faith for a determination of ETC status is deemed an ETC until and unless the Commission makes a contrary determination. This section further requires that the Commission determine whether a person qualifies as an ETC within sixty (60) days of such person’s application. Finally, section 34(1)(1) requires the

Commission to promulgate rules implementing the application process and procedure for determining ETC status within 12 months after the date of enactment of the Telecommunications Act.

As noted by the Commission in the "Introduction" and "Background" sections of the NOPR, one of the key objectives of Congress in adopting the Telecommunications Act was to permit entry by registered holding companies into the telecommunications field and, thereby, enhance competition within the telecommunications industry. Prior to the adoption of the Telecommunications Act, the ability of registered holding companies to engage in commercial telecommunications activities was severely constrained as a result of the Act's provisions generally limiting the operations of a holding company operations to the core public utility business and "such other businesses as are reasonably, or economically, necessary or appropriate" thereto. Given the substantial capital resources of registered holding companies, as well as the considerable expertise such companies have acquired in operating and developing massive telecommunications systems to serve their principal utility businesses, Congress determined that registered holding companies could be effective competitors in the telecommunications industry and should be free to enter the field on the same basis as other entities, without the need to apply for and receive approval of the Securities and Exchange Commission (the "SEC").

Entergy, therefore, concurs with the Commission's view that neither the public interest, nor the intent of Congress, would be served if the ETC determination process becomes "a regulatory barrier to significant new entry into the telecommunications industry." The proposed rules are consistent with the general deregulatory nature of the Telecommunications Act and properly reflect the narrow scope of the proceeding contemplated under paragraph (a) of section 34, which is to determine whether a person is "engaged, directly or indirectly. . .and exclusively" in one or more of the authorized ETC businesses referred to therein. The Commission's proposals also demonstrate a sensitivity to the need of aspiring ETCs for a prompt and final determination of their status under section 34.

Entergy believes, however, that the NOPR should be expanded to provide necessary guidance concerning the interpretation and treatment of the Act's requirement that ETCs be engaged "exclusively" in one or more of the statutorily defined telecommunications businesses set forth in subparagraphs (A), (B), (C) and (D) of section 34(A)(1). In light of the clear intent of the Telecommunications Act to create additional competition in the telecommunications industry, Entergy submits that the Commission's procedure for determining ETC status should flexibly interpret the "exclusivity" requirement. Consistent with the foregoing, ETC certification should be granted

under circumstances where the applicant, as a result of incidental involvement in certain non-qualifying activities, may not technically comply with the requirements for ETC status at the time an application is submitted, but, nevertheless, represents that it will divest any such other operations within a reasonable period of time. In addition, the Commission should consider granting ETC status under the circumstances in which the applicant holds a minority interest as an investor in a predominantly telecommunications enterprise. Entergy's views on these issues, as well as the other matters raised by the Commission's NOPR, are set forth below.

II. Comments on Proposed Rules

A. Commission Responsibilities

Entergy agrees that the Commission's role under section 34(a)(1) is limited to determining whether the representations made in the ETC application are adequate to demonstrate that the applicant has (or will have on a going-forward basis) the attributes of an ETC set forth in the statute. Other factors, such as the public interest merits of entry by the applicant, or the costs or magnitude of the applicant's proposed business activities, are not relevant to whether a section 34 application should be granted.

Indeed, as indicated by the Commission in the NOPR, given the intent of Congress “to allow holding companies to become vigorous competitors in the telecommunications industry,” the public interest would clearly not be served if the application review process “became a regulatory barrier to significant new entry into the telecommunications industry.”

B. Filing Requirements

Entergy is in general agreement with the contents of the application, as set forth in the proposed regulations. Specifically, Entergy believes it is appropriate, as proposed, that the applicant be required to provide a brief description of the planned activities of the applicant (including any other eligible companies owned or operated by applicant), as well as a sworn statement attesting to the accuracy of such description and its adequacy to support ETC status under the Act.

In this connection, Entergy notes that some telecommunications companies may engage in non-telecommunications activities that are not material to their overall business and which could easily be discontinued or divested without substantially disrupting business operations.

However, it may not always be practical to accomplish such a divestiture

prior to, or as a condition of, a proposed registered holding company investment. For this reason, Entergy submits that the Commission's inquiry should not be rigidly confined to an examination of the applicant's operations at the time the application is filed. Moreover, the commission should consider whether the investment by a registered holding company will be a minority interest in a predominantly telecommunications enterprise where divestiture of the non-telecommunications portion of the business would be impracticable or would not be a matter over which the holding company could exert control. A flexible approach by the Commission in these respects would clearly advance the Congressional purpose of encouraging participation by registered holding companies in the telecommunications industry in order to create greater competition.

Consistent with the foregoing, Entergy proposes that the Commission regulations require that the applicant describe its proposed future business activities and the actions that it proposes to take, if appropriate, to divest (or otherwise discontinue) or limit its investment or participation in any non-telecommunications related activities that would not qualify as "related or incidental" within the meaning of section 34(a)(1)(D). Moreover, the terms "related and incidental" should receive a broad interpretation, so that entities that are predominantly telecommunications

enterprises may not be excluded from ETC status. In the event that such additional operations are to be divested, a statement by a representative legally authorized to bind the applicant would verify that divestiture of the non-telecommunications business components would be accomplished within a specified reasonable period of time and that, following such divestiture, the applicant would be qualified as an ETC and fully satisfy the requirements of section 34(a)(1). If the investment by a registered holding company consists of a minority interest in a predominantly telecommunications enterprise where divestiture of the non-telecommunications portion of the business would not be reasonable or practicable or under the control of the registered holding company, such circumstances should be described by the applicant and the FCC should permit such investment without a requirement for divestiture on the theory that such an interest would represent only an incidental activity and would be in furtherance of the competitive intent of Congress in adopting section 34. Entergy submits that this would be consistent with the express terms of section 34(a)(1) and, in fact, is essential if registered holding companies are to be permitted to gain entry to and compete in the telecommunications industry on an equal basis with other entities.

C. Single Application for Multiple Entities

Entergy agrees there is no reason why separate applications should be

required to be filed under circumstances where multiple entities affiliated with the same public utility holding company parent seek ETC status. Registered holding companies desiring to invest in the telecommunications industry will often elect to establish separate corporate entities to participate in various projects. Although these projects may be entirely independent and be located in different geographic areas, in most cases, the general scope of the proposed business activities will be substantially similar, if not identical. Under these circumstances, the purposes of the Act should be adequately served by permitting the ETC status of all such related entities within a holding company system to be determined through a single application. This procedure will also avoid unnecessary administrative burdens and additional costs associated with the review, notice and determination of multiple applications.

D. Service of Applications on SEC and State Commissions

Entergy does not object to the Commission's proposal that applicants be required to serve a copy of the ETC application on affected state utility regulatory commissions. Entergy believes, however, that because the SEC has no authority to review ETC applications, and registered holding companies are permitted under the Telecommunications Act to acquire and hold the securities of an ETC as well as to issue or sell securities for

purposes of financing such acquisitions, without limitation and without prior SEC approval, no purpose would be achieved by requiring the filing of ETC applications with the SEC. Entergy believes that it should be sufficient that the SEC is notified pursuant to section 1.4005 of the proposed rule once an ETC application is granted.

E. Public Notice of Filing

Entergy agrees that there is no legal requirement to provide public notice of an ETC application. Nevertheless, Entergy believes that there is some value to providing such notice. In light of the finality of Commission action on an application under section 34, it is appropriate for the Commission to inform the public of the filing of each ETC application. However, it is important that persons commenting on pending applications recognize, as the Commission carefully explains in the NOPR, that the Commission's role under section 34 is limited to determining whether the factual representations made in an application are adequate to demonstrate that the applicant satisfies the conditions of ETC status. Comments, therefore, must be limited to the adequacy of these representations to demonstrate that the planned activities of applicant are within the scope of the statutory ETC criteria. The Commission should not consider comments that raise issues outside the purview of the statutorily fixed determination, such as comments relating to the costs of the applicant's

business activities, the applicant's proposed financing arrangements or comments raising public policy considerations. Moreover, without supporting evidence, mere allegations challenging the information presented by an applicant should not cause the Commission to deny an application. Finally, given the narrow focus of the Commission's review and the goal of developing as streamlined an ETC process as possible, Entergy believes that the Commission should limit the comment period to 25 days or less and that the Commission should not entertain any requests for hearing.

F. Applications Deemed Granted

Entergy endorses the proposal that an application for determination of ETC status be deemed to have been granted if the Commission does not issue an order within 60 days. Although section 34 establishes a 60-day deadline for Commission determination of an applicant's status, the statute does not explicitly set forth the legal implications resulting from the failure of the Commission to act within this time period. The Commission's proposal reserves to the Commission the full statutory period allowed for review of the application, but at the same time provides regulatory certainty to the applicant, which is critically important to the development of telecommunications projects. The proposal also promotes administrative efficiency by relieving the Commission of the necessity of

issuing an order when the applicant clearly meets the statutory criteria.

This is consistent with the legislative intent that there be a presumption favoring a claim of ETC status.

G. Change in Circumstances

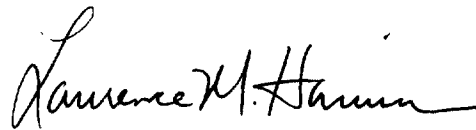
Entergy agrees that an ETC determination is based on the facts that are presented to the Commission and that a material variation from those facts could render an ETC determination invalid. Entergy, therefore, does not object to the proposal that an ETC be required, within 30 days of any material change in facts that may affect an ETC's eligibility for ETC status under section 34(a)(1), to either (a) apply to the Commission for a new determination of ETC status; (b) file a written explanation with the Commission of why the material change in facts does not affect ETC status; or (c) notify the Commission that it no longer seeks to maintain ETC status. Entergy believes, however, that a material change in circumstances which is only of temporary duration should not negate ETC status. As discussed under Item II-B above, existing ETCs may, from time to time, seek to acquire interests in other predominantly telecommunications companies that incidentally engage in certain non-qualifying business activities. Although these additional business activities may not be material to the company's overall business, they may cause the acquiring ETC to fall temporarily outside the scope of the ETC

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criteria. Entergy submits that, under these circumstances, the acquiring ETC should be permitted (in support of the required explanation that the acquisition does not or should not affect its ETC status) to represent that it will divest or discontinue any non-qualifying business operations within a reasonable period of time following completion of the proposed acquisition. Given the legislative intent to exempt broadly the acquisition of ETCs by registered holding companies, this temporary change in the scope of the acquiring company's business should not affect its continuing status as an ETC.

We appreciate the Commission's consideration of the foregoing comments submitted on behalf of Entergy Corporation and commend the Commission for its rule proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Laurence M. Hamric", with a stylized, flowing script.

Laurence M. Hamric

LMH:MWH:mjf

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Page 14

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